

Notice of Public Hearing

LSA Document #13-528

Notice of Public Hearing

Under [IC 4-22-2-24](#), notice is hereby given that on April 15, 2014, at 10:30 a.m., at the Indiana Government Center North, 100 North Senate Avenue, Room N501, Indianapolis, Indiana, the Natural Resources Commission will hold a public hearing on proposed addition of [312 IAC 9.5](#) to establish an option for an in-lieu fee to mitigate adverse impacts to fish, wildlife, or botanical resources for activities authorized by a permit under [IC 14-26-2](#), [IC 14-28-1](#), or [IC 14-29-1](#).

[IC 4-22-2-24\(d\)\(3\)](#) Justification Statement: The Department of Natural Resources (DNR) is proposing new rules in this package that establish an option for the payment of a fee (known as an in-lieu fee) to mitigate unreasonable detrimental impacts to fish, wildlife, or botanical resources for activities authorized in permits issued by the DNR under the Lakes Preservation Act ([IC 14-26-2](#)), Flood Control Act ([IC 14-28-1](#)), and the Navigable Waterways Act ([IC 14-29-1](#)). These rules allow an applicant for a permit from the DNR to provide payment to the Indiana Natural Resources Foundation to mitigate for impacts to fish, wildlife, or botanical resources as the result of the project.

Mitigation is required to offset unreasonably detrimental impacts to fish, wildlife, and botanical resources pursuant to [IC 14-28-1-22](#) and [312 IAC 10-2-39](#). Additionally, the Natural Resources Commission has an information bulletin for floodway habitat mitigation that sets forth specific requirements for mitigation for construction in a floodway. Instead of having to identify a mitigation location, prepare a mitigation plan, do mitigation on-site with the planting of trees or other vegetation, and conduct monitoring for several years, an applicant will have the option of paying a fee to the Indiana Natural Resources Foundation instead. The DNR Division of Fish and Wildlife will review applications for payment of an in-lieu fee instead of reviewing mitigation plans to replace the habitat lost. Identifying appropriate mitigation lands can be time consuming for applicants and involve significant staff time to evaluate the locations as well. Mitigation plans are typically very detailed and include lists of plants, including their size, location, and spacing when planted, and a monitoring plan to ensure that the plants grow as required in the mitigation plan. Monitoring ranges from 3 to ten years, and take more time for the Division of Fish and Wildlife's biologist to review every year and check the site to see if it is in compliance. If an applicant can pay the fee required instead of submitting a detailed mitigation plan that includes finding land to do the mitigation, planting the trees and other vegetation, and multiple years of monitoring, an applicant will likely save time and effort.

The primary benefits are to permit applicants, such as INDOT, that have large projects that require mitigation, and paying for the in-lieu fee will save time as well as money over time to purchase land and monitor the mitigation site for up to 10 years.

The DNR believes that approximately 110 applications for the in-lieu fee option will be submitted by having this new option in [312 IAC 9.5-3-1](#).

The only effects on business are for those that need a permit from the DNR to do construction in a floodway, navigable waterway, or public freshwater lake and have to do mitigation to offset unreasonably detrimental impacts to fish, wildlife, and botanical resources. They will have a third option for mitigation, which is this new option of submitting payment through an application process instead of developing and completing the work in a mitigation plan or going through a mitigation bank. Mitigation plans can take more time and effort to complete and monitor for several years. A business or local government entity that applies for a permit will likely save time and could save some money over time. A typical mitigation plan can cost thousands of dollars and include obtaining an easement on other property to complete the work and monitor it for three to 10 years, whereas the in-lieu fee option in [312 IAC 9.5-3-1](#) will require a one-time floristic quality assessment, completion of an application form, and submission of the required amount of money for the amount and quality of habitat impacted.

There could be a cost savings to regulated entities (permit applicants) long term by not having to purchase land or obtain approval from another landowner to do the required mitigation, purchase supplied (trees and other plants), and monitor the mitigation site for multiple years. It is a one-time payment. There will likely not be a cost savings initially because the one-time floristic quality assessment must be done by a qualified biologist, and the fee schedule will incorporate costs for doing mitigation and ensuring that it does not fail, but over the long term, it will likely save money at least through the saving in employee time and effort. The fees will be determined in a nonrule policy approved by the Natural Resources Commission to allow for modifications to the fees as this program is developed and fully implemented.

Sources of information for determining costs and benefits were obtained from staff of the DNR Division of Fish and Wildlife. The number of permit applicants that are expected to apply for this in-lieu fee option is 25% of the number of permit applicants in Fiscal Year 2013 (436). This number was obtained from the DNR's Unity Database of permit applications.

Copies of these rules are now on file at the Indiana Government Center North, 100 North Senate Avenue, Room N501 and Legislative Services Agency, Indiana Government Center North, 100 North Senate Avenue, Room N201, Indianapolis, Indiana and are open for public inspection.

Bryan W. Poynter
Chairman
Natural Resources Commission

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